

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RAWLINGS SPORTING GOODS COMPANY,)
INC.,)
Plaintiff,) No. 10-cv-0933
v.)
UNDER ARMOUR, INC.,) COMPLAINT FOR FALSE
Defendant.) DESIGNATION OF ORIGIN,
) MISREPRESENTATION OF
) FACT, TRADE DRESS
) INFRINGEMENT, TRADEMARK
) INFRINGEMENT, FALSE
) ADVERTISING, UNFAIR
) COMPETITION, AND
) VIOLATIONS OF THE
) WASHINGTON CONSUMER
) PROTECTION ACT

Plaintiff, Rawlings Sporting Goods Company, Inc. (“Rawlings”), by and through its undersigned counsel, respectfully makes the following allegations for its Complaint against Defendant Under Armour, Inc. (“Under Armour”). These allegations are made upon knowledge with respect to Rawlings and its own acts, and upon information and belief as to all other matters.

INTRODUCTION

1. For more than a century, Rawlings has manufactured sports equipment and apparel, including for baseball, hockey, basketball, and football for professional, collegiate, interscholastic, and amateur organizations. Rawlings manufactures, advertises, sells, and distributes softballs, helmets, protective equipment, aluminum and wood baseball bats, gloves, basketballs, and accessories. Among Rawlings' products is the COOLFLO® batting helmet, which has achieved widespread recognition in the baseball industry. The COOLFLO® helmet comprises a unique configuration and has a distinctive trade dress.

2. To trade on Rawlings' hard-won success with the COOLFLO® helmet, Defendant Under Armour has apparently affixed its logo to the COOLFLO® Helmet Mark and Trade Dress, and distributed photographs of the infringing image to at least two magazines. In one magazine, the infringing image appears in an advertisement for Under Armour's batting gloves. The advertisement therefore both falsely implies that Rawlings endorsed Under Armour's products and infringes the COOFLO® Helmet Mark and COOLELO® Trade Dress.

3. Because of Under Armour's unlawful activity, Rawlings has been forced to bring this action.

PARTIES

4. Plaintiff Rawlings is a Delaware corporation with its principal place of business in St. Louis, Missouri.

5. Defendant Under Armour is a Maryland corporation with its principal place of business in Baltimore, Maryland.

JURISDICTION AND VENUE

6. This action arises under 15 U.S.C. § 1051 *et seq.* for violations of the Lanham Act, and under the laws of the State of Washington.

7. This Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. §§ 1121 and 1338(a) because it arises under federal trademark law, 15 U.S.C. § 1125. Plaintiff also asserts claims under Washington law, which are so related to the federal question claims that they are part of the same case and controversy, and therefore fall within the scope of this Court’s supplemental jurisdiction under 28 U.S.C. §§ 1338(b) and 1367. Jurisdiction is also proper under 28 U.S.C. § 1332 because this action is between citizens of different states and the matter in controversy exceeds \$75,000, exclusive of interest and costs.

8. Upon information and belief, Under Armour does regular business in this judicial district. Upon information and belief, Defendant has also committed acts of false designation of origin, misrepresentation of fact or misleading description of fact, trade dress infringement, trademark infringement, false advertising, unfair competition, and violations of the Washington State Consumer Protection Act in this judicial district.

9. Venue is proper in this district under 28 U.S.C. § 1391.

PLAINTIFF RAWLINGS' RIGHTS

10. Rawlings is one of the world's most well-known and successful manufacturers and distributors of sports products, including baseball bats, helmets, and other baseball accessories. Rawlings' products have been sold for more than 100 years and have provided customers with consistent characteristics and quality. Rawlings' customers and the public have come to rely upon and look for Rawlings' trademarks and trade dress

1 to identify products originating from Rawlings. As a consequence, Rawlings' name,
2 trademarks, and trade dress have come to symbolize valuable goodwill and reputation.
3 Rawlings has produced, advertised, sold, and distributed its products throughout the United
4 States and the world.

5 11. Since at least as early as 2004, Rawlings has continuously produced,
6 advertised, sold, and distributed batting helmets that are comprised of a unique and
7 distinctive product configuration and which are identified by the word mark COOLFLO®.
8 At the time of its introduction, conventional batting helmets had a basic bowl shape.
9 Important and distinctive features of the COOLFLO® helmet include the contours of the
10 ridges and placement of the vents. The unique design and appearance of the COOLFLO®
11 helmet was well received and has been very successful in the marketplace. The
12 configuration of the COOLFLO® helmet is so distinctive that consumers are able to
13 distinguish and identify helmets comprised of the configuration as a product originating
14 from Rawlings. For this reason, the configuration of the COOLFLO® helmet serves as a
15 valuable and distinctive indication of source and trademark. The trademark embodied in
16 the COOLFLO helmet is depicted in the attached Exhibit A and shown below (the
17 "COOLFLO® Helmet Mark").



12. In the spring of 2006, Rawlings began offering the COOLFLO® helmet in
13. unique two tone fading color schemes known as the COOLFLO® "highlight" series.

14. Since its introduction, the COOLFLO® helmet has been sold extensively
15. and successfully throughout the United States. Rawlings has developed significant
16. consumer recognition and good will in the design of the COOLFLO® Helmet Mark. The
17. COOLFLO® Helmet Mark also serves as a distinctive trade dress ("COOLFLO® Trade
18. Dress"). The COOLFLO® Helmet Mark and COOLFLO® Trade Dress are non-functional,
19. unique, distinctive and serve as valuable indicators of source.

16 INFRINGEMENT BY DEFENDANT

17. 14. On information and belief, Defendant Under Armour has been selling and
18. promoting products in association with the distinctive mark and logo comprised of the
19. letters "UA" shown below (hereafter referred to as the "UA Logo").



1 15. On information and belief, Defendant Under Armour has been promoting
2 and selling goods in association with a photograph of Rawlings' COOLFLO® Helmet upon
3 which a UA Logo has been affixed.

4 16. On information and belief, in January 2010, Under Armour procured an
5 advertisement in Eastbay magazine which promoted Under Armour batting gloves. The
6 most prominent feature of this advertisement is a photograph of a batter wearing Rawlings'
7 COOLFLO® helmet, and on that helmet the UA Logo has been prominently affixed. On
8 information and belief, Eastbay magazine is distributed throughout the U.S., including in
9 Washington State. A true and correct copy of the advertisement is attached hereto as
10 Exhibit B. A photograph of the helmet in the advertisement is shown below.



11 17. Upon information and belief, Under Armour also provided a promotional
12 photograph for use in the January 2010 edition of Team Insight magazine that features a
13 photograph of a batter wearing Rawlings COOLFLO® helmet, and on that helmet the UA
14 Logo has been prominently affixed. True and correct copies of the photograph and the
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1 accompanying article are attached hereto as Exhibit C. The portion of the photograph
2 showing the Rawlings helmet upon which the UA Logo has been affixed is shown below.



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10 18. Upon information and belief, Under Armour has passed off the COOLFLO®
11 Helmet and the COOLFLO® Trade Dress as Under Armour's own product by affixation of
12 the UA Logo on the COOLFLO® Helmet in an attempt to trade upon the valuable goodwill
13 in the COOLFLO® Helmet Mark and the COOLFLO® Trade Dress owned by Rawlings.

14 19. Customers and the public are likely, upon seeing the UA Logo affixed to
15 the COOLFLO® Helmet, to believe that Under Armour is the source of the helmet.

16 20. Customers and the public are likely, upon seeing the UA Logo affixed to
17 the COOLFLO® Helmet Mark and the COOLFLO® Trade Dress, to mistakenly believe
18 either that the products being sold in association with the helmet originate from Rawlings
19 or to believe that the helmet originates from Under Armour. Customers may also believe
20 that Rawlings sponsors, is affiliated with or endorses the goods sold in association with the
21 COOLFLO® Helmet upon which the UA Logo has been affixed.

22 21. Under Armour's conduct described herein creates the mistaken impression
23 that Rawlings is the source of the batting gloves promoted by the advertisement attached as

1 Exhibit B or that Rawlings endorses, sponsors or is in some way affiliated with the batting
2 gloves promoted by the advertisement attached as Exhibit B.

3 22. Under Armour's actions are a blatant effort to create the mistaken
4 impression that the helmet is an Under Armour product.

5 23. Under Armour's infringement of Rawlings' COOLFLO® Helmet Mark and
6 the COOLFLO® Trade Dress complained of herein has been willful and in bad faith.

7 **COUNT 1**

8 **FALSE DESIGNATION OF ORIGIN**

9 24. Rawlings incorporates the allegations stated by Paragraphs 1-23 as if fully
10 set forth herein.

11 25. Defendant's actions described herein constitute false designation of origin
12 in violation of 15 U.S.C. § 1125(a).

13 **COUNT 2**

14 **MISREPRESENTATION OR MISLEADING DESCRIPTION OF FACT**

15 26. Rawlings incorporates the allegations stated by Paragraphs 1-25 as if fully
16 set forth herein.

17 27. Under Armour's actions described herein constitute false or misleading
18 descriptions of fact, or false or misleading representations of fact in violation of 15 U.S.C.
19 § 1125(a).

20 **COUNT 3**

21 **TRADE DRESS INFRINGEMENT**

22 28. Rawlings incorporates the allegations stated by Paragraphs 1-27 as if fully
23 set forth herein.

29. Under Armour's actions described herein constitute trade dress infringement in violation of the common law

COUNT 4

TRADEMARK INFRINGEMENT

30. Rawlings incorporates the allegations stated by Paragraphs 1-29 as if fully set forth herein.

31. Under Armour's actions described herein constitute trademark infringement in violation of the common law.

COUNT 5

FALSE ADVERTISING

32. Rawlings incorporates the allegations stated by Paragraphs 1-31 as if fully set forth herein.

33. Under Armour's actions described herein constitute false advertising in violation of the common law.

COUNT 6

UNFAIR COMPETITION

VIOLATION OF WASHINGTON CONSUMER PROTECTION ACT

34. Rawlings incorporates the allegations stated by Paragraphs 1-33 as if fully set forth herein.

35. Defendant's conduct described herein is likely to cause, confusion, mistake and to deceive the public into believing that Rawlings' products are sponsored by, approved by, or affiliated with Under Armour, and such actions affect the public interest and will be injurious thereto, in violation of Washington State Unfair Business Practices

1 and Consumer Protection Act, RCW 19.86 *et seq.* Rawlings is entitled to recover
 2 damages, treble damages, and attorneys' fees pursuant to RCW 19.86.090.

3 36. Under Armour's conduct described herein constitutes unfair competition in
 4 violation of the common law.

5 **PRAYER FOR RELIEF**

6 Under Armour's unlawful use of Rawlings' COOLFLO® Helmet Mark and
 7 COOLFLO® Trade Dress and its blatant attempt to create the impression that the
 8 COOLFLO® Helmet originates from Under Armour substantially injures Rawlings and the
 9 goodwill associated with the COOLFLO® Helmet Mark and the COOLFLO® Trade Dress.
 10 Monetary damages cannot fully compensate Rawlings because the COOLFLO® Helmet
 11 Mark and COOLFLO® Trade Dress are unique and represent Rawlings' products and
 12 reputation to the public. Unless enjoined by this Court, Under Armour will continue to
 13 falsely designate the origin of Rawlings goods or falsely designate the origin of Under
 14 Armour goods, make false descriptions or representations, engage in unfair competition
 15 and false advertising, and use Rawlings' mark and trade dress to cause confusion among
 16 customers and the public thereby causing irreparable damage and injury to Rawlings.

17 WHEREFORE, Plaintiff Rawlings prays for relief against Defendant in the form
 18 of the following relief and any further relief the Court may deem just and proper under the
 19 circumstances:

20 A. Granting a temporary and permanent injunction against Defendant and its
 21 servants, agents, employees, successors and assigns, and all persons acting in concert with
 22 them, enjoining them from:

1 (1) using in any manner the COOLFLO® Helmet Mark or any other trademark
 2 confusingly similar thereto;

3 (2) using in any manner the COOLFLO® Trade Dress or any other trade dress
 4 confusingly similar thereto;

5 (3) affixing any trademark or trade name of Under Armour to Rawlings' products
 6 or engaging in any other actions that create the mistaken impression that Under
 7 Armour is the source of Rawlings products;

8 (4) disseminating, using, or distributing any advertising or promotional materials,
 9 electronic or otherwise that state or imply that Rawlings endorses or approves
 10 of batting gloves manufactured by Under Armour.

11 B. Requiring Defendant to deliver to Rawlings for destruction all goods,
 12 signs, advertisements, literature, business forms, cards, labels, packages, wrappers,
 13 pamphlets, brochures, receptacles, and any other written or printed material in their
 14 possession or under their control which contain or encompass the COOLFLO® Helmet
 15 Mark or COOLFLO® Trade Dress, or any colorable imitations thereof or any marks or
 16 trade dress confusingly similar thereto or which contain the use of any Under Armour
 17 trademark or trade name affixed to any Rawlings product.

18 C. Requiring Defendant to provide confirmation to Rawlings and the Court
 19 concerning its compliance with the injunction and order of destruction.

20 D. Awarding compensatory damages sustained by Rawlings and profits
 21 generated by Under Armour as a result of the acts complained of herein pursuant to
 22 federal and state law, to be trebled in accordance with 15 U.S.C. § 1117;

E. Awarding Rawlings its attorneys' fees pursuant to 15 U.S.C. § 1117 and other applicable federal and state laws;

F. Awarding Rawlings punitive damages for Defendant's willful and egregious deception of consumers and infringement of Rawlings' rights in violation of both statutory and common law; and

G. Awarding Rawlings interest, costs, and such other relief as the Court may deem just and equitable.

JURY DEMAND

Rawlings demands a trial by jury of all issues so triable.

DATED this 7th day of June, 2010.

Davis Wright Tremaine LLP
Attorneys for Rawlings Sporting Goods
Company, Inc.

By *s/Ambika K. Doran*
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